the third and fourth plaintiffs are owners of the copyright of the songs set out against their respective names in the two exhibits. Joe Chen, the managing director of the third plaintiff, in his affidavit affirmed on April 11, 1985, and Wee Tiong Wah, the managing director of the fourth plaintiff, in his affidavit affirmed on April 11, 1985, each sought to verify the claim made by Giouw Jui Chian. Such a claim, apart from the total lack of evidence in support thereof, is wholly irrelevant. What the plaintiffs are claiming in this action is copyright of recordings of the relevant songs and not copyright of the songs themselves; copyright of a recording of a song is not the same thing as copyright of a song. The plaintffs' claim is founded on section 19(1) read with section 5(1) of the Copyright Act, 1911 of the United Kingdom, which is part of the law of Singapore. Insofar as the Order is concerned only pirated copy or copies come within the prohibition, and pirated copy or copies are copies or substantial copies of any gramophone records and/or sound tapes in which copyright subsists and is vested in the plaintiffs or any of them, not being a copy or copies made by or on behalf of or with the consent of any one of the plaintiffs.

So, in order to succeed in this application, the plaintiffs must establish: first, that one of them is the owner of the copyright of a recording or recordings of the relevant song or songs, and secondly, that at least on one of the four occasions mentioned, namely: June 6, 1984, November 12, 1984, January 22, 1985 and March 29, 1985, the defendant had offered for sale or sold pirated copies of the recordings. On the first point, Wee Tiong Wah on behalf of the fourth plaintiff in his affidavits affirmed on June 19 and October 28, 1985, deposed to the following:

(a) that the fourth plaintiff paid for the cost of the recordings of the songs listed in exhibits "GJC 11" and "GJC 13" in Taiwan and is the owner of the master tape containing, *inter alia*, such recordings;

(b) that the master tape was brought to Singapore and cassette tapes containing these songs were manufactured and sold in Singapore; and

(c) that on the basis of these facts, the fourth plaintiff is the owner of the copyright of the recordings of the songs.

Even if I accept that the fourth plaintiff is the owner of the copyright of the recordings of the songs listed in exhibits "GJC 11" and "GJC 13" as deposed to by Wee Tiong Wah, there is still the second hurdle which the plaintiffs have to clear, which regrettably on the material before me they have not succeeded. All that have been produced are statements in the affidavit of Giouw Jui Chian to the effect that the cassettes of sound tape seized on the three occasions of June 6, 1984. November 12, 1984 and January 22, 1985 and the three cassettes of sound tape purchased by Serena Dua on March 29, 1985 contain, *inter alia,* songs listed in the exhibits. No evidence has been adduced to show that these alleged offending sound tapes are copies or substantial copies of the fourth plaintiff's recordings of the relevant songs.

It is settled law that in contempt proceedings, the standard of proof is one beyond reasonable doubt. In *Re Bramblevale Ltd.*[1] Lord Denning M.R. said, at p. 137:

> "A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt".

The plaintiffs have failed to establish that the defendant had committed a breach of the terms of the Order. In the result, I dismiss the application with costs.

Application dismissed.

Solicitors: *Drew & Napier; Wee Ramayah & Partners.*

ATTORNEY-GENERAL v. FRED ZIMMERMAN & ORS.

[O.C.J. (Sinnathuray J.) December 10, 1985]

[Singapore – Originating Motion No. 86 of 1985]

Contempt of Court – Publication of article in Asian Wall Street Journal – Offensive political article – Whether contempt of court.

Jurisdiction – Contempt of court – Persons not cited in proceedings filed affidavits claiming responsibility for offensive political article – Whether court can commit of its own motion – R.S.C. 1970, O.52 r.4.

Newspaper – Offensive political article – Publication of – Whether contempt of court.

The Attorney-General applied for orders of committal against the following five respondents for their several contempts of court for publishing, printing and distributing an article entitled "Jeyaretnam's Challenge" ("the article") which appeared in the October 17, 1985 issue of *The Asian Wall Street Journal* ("the Journal").

The first respondent is Mr. Fred Zimmerman ("Zimmerman"), the Editor and Publisher of the Journal; the second respondents, Dow Jones Publishing Co. (Asia) Inc.) ("Dow Jones Asia"), are the proprietors and publishers of the Journal; the third respondent, Mr. Stephen Duthie ("Duthie"), is the Singapore correspondent of the Journal; the fourth respondents, Singapore Newspapers Services Pte. Ltd. ("SNS"), are the printers of the Journal in Singapore; and the fifth respondent is Mr. John Tan Yew How ("John Tan"), the manager and part owner of Total Subscription Services, the distributors of the Journal in Singapore. Three other persons not cited by the Attorney-General have also come forward and filed affidavits in these proceedings and claimed responsibility for the preparation, writing and approval of the article for publication in the Journal.

The article was published in the Editorial Page of the Journal in the editorial column entitled "Review & Outlook". The article was about politics in Singapore and the Attorney-General submitted that there were many untruths, half-truths, insinuations and innuendoes in the article which affected the integrity and impartiality of the Courts.

The issue before the Court was not culpability but what the responsibility was of each of the respondents for the publication of the article. The Court also had to consider how to deal with the three persons who were not cited in the proceedings but who had come forward and filed affidavits claiming responsibility.

Held: (1) the statements in the article were without doubt irresponsible and offensive statements calculated to bring the Judiciary of Singapore into contempt or to lower its authority. The outrageous allegation made in them is that the Courts are not independent, that they do not decide on the evidence, the law and the arguments openly placed before them, and that they are influenced by outside considerations, in particular that the Courts can be dictated to by the Government. The statements were clearly calculated to undermine public confidence in the proper functioning of the Courts;

(2) Zimmerman has failed in his duties, both as the Editor and the Publisher of the Journal, as he has failed to devise and operate a system to avoid contempt of Court;

(3) it is the second respondents who are primarily to blame as it was their policy that prevented the staff of the Editorial Department from working with the staff of the News Department that resulted in the publication of the offending article in the Journal;

(4) it has not been proved beyond reasonable doubt that Duthie had been in some way responsible for the article;

(5) this Court can punish an offender for contempt of Court on its own motion. Rule 4 of Order 52 covers any case where the Court may think it necessary to commit on its own motion;

(6) the most serious case has been made out against the proprietors and publishers. The Court would impose a fine of $6000. The next serious offender was Kirkpatrick who must pay a fine of $4000. Then come the two Editors, Zimmerman and Gigot; Zimmerman should be fined $3000 and Gigot $2000. The Court would not impose any fine on Bartley as he did not approve the article. As regards SWS, the printers, and John Tan, the distributor of the Journal, they were each fined $500. There would be no order against Duthie.

Cases referred to:

(1) *Attorney-General* v. *Pang Cheng Lian & Ors.* [1975] 1 M.L.J. 69.
(2) *Attoney-General* v. *Wong Hong Toy* [1983] 1 M.L.J. 370.
(3) *Gallagher* v. *Durack* [1983] 57 A.L.J.R. 191.
(4) *R.* v. *Odhams Press Ltd. & Ors.* [1957] 1 Q.B. 73, 83.
(5) *R.* v. *Thomson Newspapers Ltd. & Ors.* [1968] 1 All E.R. 268, 270.
(6) *R.* v. *Gray* [1900] 2 Q.B. 36.

ORIGINATING MOTION.

Tan Boon Teik, Attorney-General (*Glenn Knight*, Director of Commercial Affairs Investigation Department, with him).

Tan Geok Ser (*Naresh M. Mahtani*, with him) for the first, second and third respondents.

Joseph Grimberg for the fourth respondents.

Teddy Lim for the fifth respondents.

Cur. Adv. Vult.

Sinnathuray J.: Pursuant to leave granted by the High Court on October 30, 1985, the Attorney-General moves this Court for orders of committal against the five respondents cited in these proceedings for their several contempts of Court for publishing, printing and distributing an article titled "Jeyaretnam's Challenge" ("the article") which appeared on October 17, 1985 issue of the *Asian Wall Street Journal* ("the Journal").

The first respondent is Mr. Fred Zimmerman ("Zimmerman"), the Editor and Publisher of the Journal; the second respondents, Dow Jones Publishing Co. (Asia) Inc. ("Dow Jones Asia"), are the proprietors and publishers of the Journal; the third respondent, Mr. Stephen Duthie ("Duthie"), is the Singapore correspondent of the Journal; the fourth respondents, Singapore Newspapers Services Pte. Ltd. ("SNS"), are the printers of the. Journal in Singapore; and the fifth respondent is Mr. John Tan Yew How ("John Tan"), the Manager and part owner of Total Subscription Services, the distributors of the Journal in Singapore.

In addition to the abovenamed, arising from quite curious circumstances referred to later, there are three other persons not cited by the Attorney-General who have come forward and filed affidavits in these proceedings and claimed responsibility for the preparation, writing and approval of the article for publication in the Journal. They are Ms. Melanie Margaret Kirkpatrick ("Kirkpatrick"), a Features Editor for the Journal, Mr. Paul Anthony Gigot ("Gigot"), the Editorial Page Editor of the Journal, and Mr. Robert Le Roy Bartley ("Bartley"), the Editor of *The Wall Street Journal*, New York.

On being served with the Motion papers and the supporting affidavits, the five respondents have filed separate affidavits. Except for the third respondent who categorically denies that he was in any way involved in the preparation or writing of the article, the others have given explanations and offered apologies for their participation in the publication of the article in the Journal. It is clear beyond doubt that the article contains objectionable statements scandalising the Courts of Singapore, the contempt of Court being one of the worst of its kind.

The article is published in the Editorial Page of the Journal in the editorial column entitled "Review & Outlook". Though the Journal is a business, economic and financial newspaper, the article is about politics in Singapore. What is complained of is that there are grave and serious allegations made in the article against the Judiciary.

The learned Attorney-General read the article in Court. In his submission, he recounted the many untruths, half-truths, insinuations and innuendoes contained in the article which affect the integrity and impartiality of our Courts. As the respondents do not contend that the article does not constitute contempt of Court, I do not propose to repeat them here. It is enough that I identify the statements in the article that amount to contempt of Court. I have itemised them, they speak for themselves.

Having said early in the article that Mr. Jeyaretnam was found guilty in the District Courts of making a false declaration and fined and sentenced to three months' imprisonment, it is said:

(1) "We don't know if Mr. Jeyaretnam is guilty.

(2) But even if he were, many Singaporeans wouldn't believe it ...

(3) ... court actions, and especially libel suits, have long been used in Singapore against opposition politicians.

(4) Mr. Jeyaretnam's conviction ... [has] outraged many Singaporeans, who believe that the government is deliberately trying to wipe out the opposition leader and his party.

(5) The fact that the magistrate who originally found Mr. Jeyaretnam innocent has been demoted buttresses their case.

(6) One prominent political scientist ... believes that the government is keeping a close eye on the public reaction to Mr. Jeyaretnam's conviction and will have it overturned if it becomes a political hot potato.

(7) That doesn't say much for Singaporeans' faith in the independence of their judiciary."

The statements that I have enumerated are without doubt irresponsible and offensive statements calculated to bring the Judiciary of Singapore into contempt or to lower its authority. The statements in so many words question the integrity and impartiality of the Courts. The outrageous allegation made in them is that our Courts are not independent, that they do not decide on the evidence, the law and the arguments openly placed before them, and that they are influenced by outside considerations, in particular that the Courts can be dictated to by the Government. The statements are clearly calculated to undermine public confidence in the proper functioning of our Courts.

As culpability is not issue, I need only briefly explain the law relating to contempt of Court. It is settled law in Singapore that it is contempt of Court to scandalise a Court or a Judge. The principles governing this class of contempt were fully dealt with by the learned Chief Justice in the case of *Attorney-General* v. *Pang Cheng Lian & Ors.*[1] Eight years later, in *Attorney-General* v. *Wong Hong Toy*[2], I had occasion to review the law again. In the context of these proceedings, anyone who attacks the integrity or impartiality of a Court or a Judge commits contempt of Court. The reason is simple. It undermines public confidence in the administration of justice.

There is another recent case that I want to refer to here as the facts are analogous and the contempt of Court is of the same kind as in these proceedings. The case is *Gallagher* v. *Durack*[3]. It is a decision of the High Court of Australia. In this case, Mr. Gallagher, a very well-known union leader and secretary of a large trade union in Australia who was found guilty of contempt of Court and sentenced to two months' imprisonment,

successfully appealed to the Federal Court of Australia. On that day, after his appeal was allowed, he met the press and television reporters and distributed copies of a resolution by the management committee of the union. The first sentence of that resolution read:

"The decision of the Federal Court is a credit to the rank and file of the Federation whose significant stand alongside their elected representatives, is the key to the reversal of the decision to jail Norm Gallagher.

When asked what his reaction or response was to the Federal Court's decision, Gallagher said: "I'm very happy to the rank and file of the union who has shown such fine support for the officials of the union and I believe that by their actions in demonstrating in walking off jobs ... I believe that has been the main reason for the court changing its mind."

The Federal Court held that in making that statement Gallagher was guilty of scandalising the Court and imposed a sentence of three months' imprisonment on him for contempt of Court. The High Court refused Gallagher's application for special leave to appeal as no ground had been shown to interfere with the decision of the Federal Court.

Gibbs C.J. in upholding the findings of the Federal Court said that Gallagher's statement that he believed that the actions of the rank and file of the union had been the main reason for the Court changing its mind can only mean that he believed that the Court was largely influenced in reaching its decision by the action of the members of the union in demonstrating as they had done. In other words, Gallagher was insinuating that the Federal Court had bowed to outside pressure in reaching its decision. The learned Chief Justice said that there can be no doubt that the offending statement amounted to a contempt of Court. He said that the authority of the law rests on public confidence, and it is important to the stability of society that the confidence of the public should not be shaken by baseless attacks on the integrity or impartiality of Courts or Judge

Now I turn to consider on the affidavit evidence before me, what the responsibility is of each of the respondents for the publication of the article.

(a) *The Editor*

It is a rule of law, said Lord Goddard C.J. in *R.* v. *Odhams Press Ltd. & Ors.*[4] that the editor takes responsibility for what is published in his paper. Some 10 years later, Lord Parker C.J. in the case of *R.* v. *Thomson Newspapers Ltd. & Ors.*[5] said that newspapers must very properly take elaborate precautions to see that they are not culpable of contempt of Court by publication. A publisher must devise and the editor must ensure that he operates a system to avoid, as far as humanly possible, any contempt of Court.

The first respondent, Zimmerman, is the Editor and Publisher of the Journal. He is also an Executive Vice-President of the second respondents, the proprietors of the Journal. In his affidavit, Zimmerman affirms that he has been the Editor and publisher of the Journal since July 1984. Prior to that, for about 21 years, he has been on the staff of *The Wall Street Journal* in New York, first as a staff reporter and subsequently as a senior editor. As the Editor and Publisher of the Journal, he accepts that he has overall responsibility for the day-to-day management of the newspaper and its contents, but with one exception which he affirms as follows:

"7. The said article appeared on the Editorial Page of the [Journal] ... The responsibility for the page rests with the Editorial Page editor, Paul Gigot, who reports not to me but directly to the Editor of The Wall Street Journal in New York.

8. About two years ago, Dow Jones New York decided that the Asian, European and U.S. editions of *The Wall Street Journal* should all have a consistent approach and format on their editorial pages.. To put this decision into effect, a new position of Editorial Page Editor was created in Hong Kong. Paul Gigot was made Editor Page Editor. A new reporting structure was introduced whereby he would send drafts of editorials and other editorial page material for publication in the [Journal] to the Editor of *The Wall Street Journal,* New York for approval. Therefore, the responsibility for the contents of the [Journal's] Editorial Page ultimately rests with the Editor of The Wall Street Journal, New York. I, on the other hand, have overall responsibility in Hong Kong for all other matters published in the [Journal].

9. In accordance with the aforementioned decision by Dow Jones New York to adopt a consistent editorial approach, Paul Gigot has complete responsibility in Hong Kong for the preparation and content of the Editorial Page which includes the 'Review & Outlook' column. He does not report to me and I have in practice no authority over what he writes. Similarly, I did not involve myself in the preparation or review of the material which is published on the Editorial Page. I can specifically confirm that I had no hand in, or knowledge of, the preparation, writing or approval of the said article."

In the subsequent paragraphs of his affidavit, Zimmerman affirms that the author of the original draft of the article is Kirkpatrick; that Duthie, the

third respondent, the correspondent for the Journal in Singapore, was not involved in the writing or publication of the said article; and that the fourth and fifth respondents, the printers and distributors, cannot alter the text of any editorial of the Journal once it is received by telefax in Singapore from Hong Kong.

Finally, notwithstanding what he has said in the paragraphs I have referred to, Zimmerman sincerely regrets and humbly apologises to the Court "for any inadvertent contempt of Court" on his part caused by the publication of the article. And, in the last paragraph, he says:

"On behalf of the second respondent and other persons connected with the said article, I wish to express their sincere and unreserved regret and humble apologies for the publication of the said article".

The explanations that Zimmerman has given are unacceptable to me. Nor can I accept, what his counsel has said, that Zimmerman is only vicariously responsible for the article in the Journal. His startling disclosure, on the internal arrangements and division of responsibilities, does not exonerate him from responsibility for the offending article in the editorial of the Journal for he is 'The Editor' of the Journal. It is so published in the Journal, for all to know, and the Editorial Page Editor, Gigot, works under Zimmerman. More importantly, early this year on February 11, 1985, when Zimmerman applied for a newspaper permit for the printing and publication of the Journal in Singapore, he did not qualify his position as Editor and Publisher of the Journal, he did not state in his application that he did not have control of the Editorial Page of the Journal. In my opinion, Zimmerman has failed in his duties, both as the Editor and the Publisher of the Journal, as he has failed to devise and operate a system to avoid contempt of Court. He has only himself to blame for abdicating his responsibilities.

(b) *The Proprietors*

The second respondents, Dow Jones Asia, as proprietors, are responsible for the publication of the article in the Journal.

The Company is incorporated in the U.S.A. The principal shareholders are Dow Jones & Inc., New York ("Dow Jones New York"). They are the proprietors of The Wall Street Journal, an internationally known daily business, economic and financial newspaper founded in 1889 in U.S.A.

The Journal is a sister publication of *The Wall Street Journal.* It is a publication dealing primarily with business and economic news concerning East Asia; also included is some political news of the region and reports from Europe and North America supplied by the *Wall Street Journal* published in U.S.A. and Europe. Approximately, one-third of the space in the Journal is devoted to advertisements and another one-third devoted to daily financial statistics from Asia, Europe and North America.

Of October 17 issue of the Journal, 34,250 copies were printed: 20,850 copies were printed in Hong Kong and 13,400 copies in Singapore. Of these, 29,602 copies were sold: 26,207 were sold in nine countries in East Asia and the balance of 3,401 copies were subscribed or sold in various other countries around the world.

On the affidavit evidence, I am of the opinion that it is the second respondents who are primarily to blame as it was their policy that prevented the staff of the Editorial Department from working with the staff of the News Department that resulted in the publication of the offending article in the Journal.

(c) *The Singapore Correspondent*

The third respondent, Duthie, came to Singapore in July 1984 as a staff writer for the Journal. He writes reports and features on Singapore, Malaysia and Indonesia. All his stories published in the Journal, with the exception of very brief news reports, carry his by-line. He denies he was in any way involved in the preparation or writing of the offending editorial article. He affirms as a fact that as a news staff writer, any assistance by him in the preparation of an editorial is considered a violation of the policy adopted by the Journal.

Duthie states that in early October 1985, an Editorial Page Features Editor, Melanie Kirkpatrick was in Singapore to research a story on the Central Provident Fund. After he was served with the motion papers on November 1 1985, he learnt that the article was written by Kirkpatrick and edited by the Editorial Page Editor, Paul Gigot. He did not assist in the writing of the article, nor did he provide any information, background or otherwise, which could have led to or assisted in its preparation and publication.

When the police investigated into the com-

plaint of the Attorney-General, Duthie gave a statement to the police. He told Inspector Pereira who recorded his statement in question and answer form that as regards the Journal the Editorial Department and the News Department are distinct and separate. He was asked about the article in the Journal, in particular, if it was not he who had given information to his editor in Hong Kong, how was it that the editor had obtained quite specific information for the article? Duthie gave an evasive answer; it is in his own handwriting. He said:

"No I did not supply information for the editorial. Our Hong Kong headquarters subscribes to Singapore newspapers, including *The Straits Times*. Also – but I don't know in this case – editorial writers for *The Asian Wall Street Journal* do their own telephoning and reporting before writing editorial."

The police were of course sceptical of what they were told. They found it difficult to accept that the Journal, a reputable international newspaper, had published a controversial political article in the Editorial Page of the Journal without checking on the facts with their staff writer in Singapore.

Be that as it may, the position now is somewhat different. Besides Duthie's affidavit, there are four other affidavits in which the deponents affirm that Duthie had nothing to do with the article. Though the deponents were not cross-examined, nevertheless, there are no grounds for me to reject their affidavit evidence. I am therefore bound to hold that it has not been proved beyond reasonable doubt that Duthie had been in some way responsible for the article.

(d) *The Printers*

For the fourth respondents, SNS, the printers of the Journal in Singapore, there are two affidavits by Mr. Alaster Malcolm Smith who is a Director and Group General Manager of the Company. There is no need for me to go into the details of the Company, or of the relationship between SNS and Dow Jones Asia.

SNS acknowledge that the passages in the article complained of by the Attorney-General amount to contempt of Court. SNS also accept that there is a duty imposed on those who participate in the dissemination of printed matter to ensure that it does not contain material which amounts to contempt of Court. SNS were not aware of the possibility that such material might exist in the issue of the Journal of October 17. However, SNS have given an unreserved and unqualified apology for having participated innocently in the dissemination of the offending article.

There is a lengthy explanation why SNS were not aware when the article was printed in Singapore that it contained objectionable matters. Briefly, SNS have no control over what is required by the second respondents to print. There is also a time constraint for printing the Journal which made it for all practical purposes impossible for SNS to check for objectionable matters in the Journal.

As regards the printing of the Journal, what happens is that, from about 4.00 a.m., six days a week, there is transmitted to the fourth respondents by the second respondents, *via* satellite, film negatives of each page of the day's issue of the Journal. As the negatives arrive, they are processed and printed onto printing plates which are then installed into the printing presses. Printing commences only after all the plates are installed, usually between 6.15 a.m. and 6.45 a.m., depending on when the last negative is received by the fourth respondents. Printing is generally completed by 7.00 a.m., or thereabouts, and copies of the Journal are then bundled to await collection by the distributors.

So it was with the printing of the issue of the Journal of October 17. The fourth respondents' records show that the last negative was received at 6.07 a.m.; that the last printing plate was ready by 6.18 a.m.; that printing began at 6.20 a.m.; and that by 7.05 a.m., the entire print order of 13,400 copies was completed. Within ten minutes or so later, all the copies of the Journal were ready for collection by the distributors.

All that I have now said about the fourth respondents come from the submission of Mr. Grimberg who appeared for them. I accept his statement from the Bar that the fourth respondents acknowledge, transcending all commercial considerations, is the integrity and reputation of the Courts. Later when I consider penalties I shall bear in mind that the fourth respondents have come to Court in an attitude of total contrition.

(e) *The Distributors*

John Tan, the fifth respondent, accepts responsibility for distributing the offending article in Singapore through his firm, Total Subscription Services.

That morning, on October 17, 3917 copies of

the Journal printed by the fourth respondents were handed to one Osman bin Abu Baker, the delivery assistant of Total Subscription Services, at the Times House. They were folded and put in bundles of about 150 copies per bundle. Osman broke the bundles and distributed copies of the Journal to a team of part-time delivery boys who then physically delivered copies of the Journal to the destinations. 2,693 copies were delivered to subscribers; 654 copies were distributed to 11 named hotels in the Orchard Road area and 570 copies were distributed to various news-stands. Under the terms of the distributorship appointment deliveries have to be completed within three hours from the collection of the Journal.

John Tan affirms that he himself does not go to the distribution point in Times House save for occasional visits to show his presence. On October 17, he was in fact not in Singapore. He went to Perth, Australia, on October 11 and returned to Singapore via Kuala Lumpur on October 18. I accept his sincere and humble apologies.

(f) *The Three Others*

There remains for me to refer to the affidavits of Kirkpatrick, Gigot and Bartley. Kirkpatrick, employed by the second respondents as a Features Editor, works on the Editorial Page of the Journal. She is the author of the article. This is what she says:

"I wrote the original draft of the article following my visit to Singapore from September 30 to October 6, 1985 ..... I was in Singapore then to research a story on the Central Provident Fund of Singapore. However, whilst in Singapore, I saw that the role of opposition parties and Jeyaretnam's case was given wide coverage in the news media and was the subject of considerable public discussions. I interviewed business contacts, academics, professionals and other people to gather information and views for this subject.

Upon my return to Hong Kong on October 6, 1985 I submitted a draft of my article to the Editorial Page Department. The Editor Page Editor, Paul Gigot, ... read my draft and after making some amendments, he decided to use it as an editorial in the "Review & Outlook" column of the Editorial Page .....

..... Stephen Duthie ..... did not contribute to the said article at all. He is a news correspondent for the [Journal and reports directly to Barry Wain, the Managing Editor ..... Dow Jones' corporate policy disallows news and Editorial Page staff from working together on editorials. Furthermore, during my said visit to Singapore, I did not discuss the substance or detail of my proposed story with Stephen Duthie, as he had his own assignments and work. In any case, my work involved interviewing members of the public directly for information and views.

I did not intend to write an article which would be considered to be in a contempt of the Courts of Singapore. I sincerely regret and humbly apologise for any offence I may have caused this Honourable Court."

Having carefully considered the affidavit of Kirkpatrick, I have grave doubts that, for writing the article, she had interviewed and gathered information as claimed by her. I agree with the learned Attorney-General that the article was written contrary to the best journalistic practices that one would have expected from an international newspaper, like the Journal. It appears from Duthie's affidavit that the article was written contrary to the policies of the Journal as well. Duthie has said that it is within the Journal's policies that before a journalist writes on any subject that he or she will at least try to discuss the issue with the principals involved; and, as for news stories, the reporter will get them from direct sources. He gave an example. He wrote an article where he used the term "political scientist". He said that in that article he identified who the political scientist was and the actual reported words were quoted by him.

As regards the article, Kirkpatrick did nothing of the kind described by Duthie. In fact, she got most of her facts wrong. Two examples will suffice. The article states as a fact that the Magistrate who originally found Jeyaretnam innocent has been demoted. In this statement alone, there are three facts which are untrue: one, it was not a Magistrate who had earlier tried Jeyaretnam; two, the Senior District Judge who heard the case convicted Jeyaretnam on one charge; three, the Judicial Officer was not demoted. The second is an inexcusable mistake. Jeyaretnam was found guilty of making a false declaration. The article states that he was "fined about $930 and sentenced to three months in jail". The fact is no fine was imposed on Jeyaretnam. I do not know where Kirkpatrick got her facts from, but her competence as a journalist is very much in question.

Next, there is the affidavit of Gigot. In September 1982, he was appointed the Asian correspondent for *The Wall Street Journal,* New York. In January 1984 he was appointed the Editorial Page Editor of the Journal. He confirms that Kirkpatrick sent to him a draft of the article. He affirms that he rewrote some sections and after some further refinement he sent it for approval to Barley, the Editor of *The Wall Street Journal*

in New York. He received the approval from a member of Bartley's staff on October 16, 1985 and the article was published in the Journal on the following day. He has expressed his sincere regrets for any offence he may have caused to the Courts. In my opinion, Gigot must share the responsibility for the offending article with Kirkpatrick.

Lastly, Bartley, the Editor of *The Wall Street Journal,* New York, in his short affidavit accepts ultimate responsibility for the article in the Journal, although he did not in fact read it before publication. He expresses his deep regret and sincere apology for any offence the editorial has given.

The question that now arises is how do I deal with these three persons who, though not cited in these proceedings, have come forward and filed affidavits admitting to being directly responsible for the offending article? They were not cited because the Attorney-General, and the police who had investigated into his complaint, did not know of their participation. It is pertinent to note here that Duthie could have told the police that Kirkpatrick, a member of the Editorial Staff of the Journal had visited Singapore three weeks earlier. This would have given a lead to the police to investigate further, and Kirkpatrick certainly would have been cited in these proceedings and Duthie would have been left out.

So far as the law is concerned, I am satisfied that this Court can punish an offender for contempt of Court on its own motion. It is provided for in Order 52 of the Rules of the Supreme Court, 1970 under which these proceedings have been brought. Rule 4 of Order 52 reads as follows:

"4. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the High Court ... to make an order of committal of its own motion against a person guilty of contempt of Court."

The note in the White Book on the effect of this Rule states that the present Rule covers any case where the Court may think it necessary to commit of its own motion.

There is no reported case on the application of this Rule. There is, however, the celebrated case of *The Queen* v. *Gray*[6] – which is of assistance. In this case, there was a publication in the newspaper, *Birmingham Daily Argus,* of an article headed "A Defender of Decency" which contained a scurrilous personal abuse of a Judge, with reference to his conduct as a Judge. The Attorney-General moved for an order calling upon Thomas Lancaster to show cause why he should not be committed for contempt of Court for the publication of the article. It then appeared that Thomas Lancaster was the printer, and also the secretary and manager of the company of the said newspaper. After an adjournment, when the matter came on for hearing again, the Attorney-General informed the Court that there was affidavit evidence that when the article was published Thomas Lancaster was abroad and that he was still abroad. He then announced that Howard Alexander Gray, the editor and writer, had come forward and acknowledged his sole responsibility in the matter. Gray, in his affidavit, expressed his regret for what he had done. Lord Russell of Killowen C.J. said in his judgment:

"How, then, are we to deal with this matter? That it is a serious case no one can doubt, and I do not hesitate to say, speaking for myself and for my brethren, that, if it had not been for the conduct of Howard Alexander Gray since the publication of the article, and especially if it had not been for the affidavit which he has put before the Court for its consideration, we should all have thought it our duty to send Howard Alexander Gray to prison for a not inconsiderable period of time. But he has come forward and frankly acknowledged his own individual and sole responsibility in the matter. He has done more. He has, in the affidavit to which I have made reference, expressed – we hope and we believe sincerely – his regret for what he has done."

In this case, I must add that Gray also appeared in person and was represented by counsel. Having expressed his deep regret and profound apology, he was no doubt properly advised by his counsel that he should present himself in Court.

In these proceedings, the first and second respondents and the three persons are physically outside the jurisdiction. There are, however, their affidavits which they have put forward for consideration. As I have said, Kirkpatrick and Gigot have acknowledged direct responsibility for the article. And Bartley accepts vicarious responsibility for it. Zimmerman relies on them to exculpate himself. And Duthie needs them to corroborate his case. In these circumstances, which are most exceptional, having regard to the jurisdiction vested in this Court, I must consider sanctions not only against the respondents but also the three others.

As regards penalties, Mr. Tan Geok Ser for the first and second respondents has urged upon me that I be guided by my own decision in *Wong Hong Toy's* case. It is true that in that case the respondent had argued against culpability and did

not make any apology for his contempt of Court. These are grave matters affecting penalty. However, the more important considerations are the nature of the contempt, who the contemnor is, the degree of his culpability, how the contempt was published, the kind of publication and the extent of the publication. When all these are considered it becomes obvious that these contempt proceedings are very different from that of *Wong Hong Toy's* case.

Somewhat nearer would be *Gallagher's* case. Even as regards it, in that case, there was only one statement which amounted to contempt of Court, whereas in these proceedings there are several statements contemptuous of our Courts. Again, in that case, besides an oral statement there was a union resolution distributed to a few persons. In the present proceedings, however, it is an international newspaper destined for an informed public which had in its editorial denigrated our Courts. That is why I said at the beginning that the contempt of Court in these proceedings is one of the worst of its kind.

For the fourth respondents, Mr. Grimberg cited to me two cases on how printers have been dealt with for contempt of Court. As the cases are also relevant for publishers, editors and distributors, I give the penalties that were imposed in them. In the case of *Thomson Newspapers* which I referred to earlier, Lord Parker C.J., sitting with Widgery and Chapman JJ., fined the publishers, *The Sunday Times,* £5,000 for the publication of a photograph and an article likely to prejudice a fair trial. Having regard to the relations between the publisher and the printer which is not explained, no fine was imposed on the printer. As regards the editor, the learned Lord Chief Jusitice said:

"It cannot be said that he acted recklessly or turned a blind eye. Indeed, in the opinion of the Court, he had devised, so far as it is humanly possible, a system which would prevent this sort of things."

In the second case, *Pang Cheng Lian's* case, the local part-time reporter for *Newsweek* was fined $1,500, and the local distributor of the magazine $500 for the publication of an article in the magazine entitled "Singapore – Selective Justice". It would appear that as this case was the first of its kind in Singapore, the learned Chief Justice dealt with the parties before him leniently.

The one other case I want to refer to is, again, *Gallagher's* case. Gibbs C.J. said in this case that the object of the imposition of a penalty upon a person convicted of contempt of Court is to endeavour to ensure that the unwarranted statements which he has made about the Court or a Judge are repelled and will not be repeated.

With these reported cases in mind, I will now impose penalties for contempt of Court in these proceedings. The most serious case has been made out against the proprietors and publishers. I impose a fine of $6,000. The next serious offender is Kirkpatrick. She will pay a fine of $4,000. Then come the two Editors, Zimmerman and Gigot: Zimmerman is fined $3,000 and Gigot $2,000. I will not impose any fine on Bartley as he did not approve the article. As regards SNS, the printers, and John Tan, the distributor of the Journal, they are each fined $500. There is of course no order against Duthie.

As regards costs, for reasons I have already given, Duthie will have to pay his own costs. The other four respondents will pay costs to the Attorney-General.

Order accordingly.

Solicitors: *Arthur Loke & Partners; Drew & Napier; Wong & Lim.*